IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 42 of 1993

Date of decision: 05.12.2007

State of H.P. Appellant

-vs-

Sukhdev Singh and others. Respondents

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

For the appellant : Mr. Som Dutt Vasudeva, Additional Advocate General.

For respondents : Mr.V.S.Rathore, Advocate.

Surjit Singh, J. (oral)

Heard and gone through the record.

Respondent Sukhdev Singh is the husband, respondent Vyasa Devi mother-in-law, respondent Omi Devi and respondent Sudesh Kumari sisters-in-law of deceased Babita who died on 4-3-1990 as a result of burn injuries received by her in an incident of fire that took place on 18-2-1990. The deceased was taken to the District Hospital Dharamshala on 18-2-1990 with 70% burn injuries. At the time she was shifted to the Hospital, she was unfit to make statement. However, she was fit to make statement on 20-2-1990, per opinion Exhibit PC/1 of Dr. R.K. Chaudhary (PW2). Thereafter, statement of the deceased was recorded by Sub Divisional Magistrate, Dharamshala. The record of that statement is Exhibit PD. According to this statement, the deceased poured kerosene on herself from

[1] Whether reporters of the Local papers are allowed to see the judgment?

a lamp and set herself afire. She stated that nobody was responsible for this act of hers and that in fact, at times, she used to have the feeling either to kill herself or some one else and she happened to commit the act in a moment of the aforesaid kind of feeling. On 1-3-1990, an application, purporting to be thumb impressed by the deceased, was submitted to S.D.M. Dharamshala in which it was stated that at the time of making statement Exhibit PD, the deceased was not in her senses, as her condition was not good and so she wanted to make a fresh statement narrating exact details of the incident. Upon receiving the said application, S.D.M. again visited the Hospital and recorded her fresh statement, Exhibit PF, in which the deceased got recorded that some time after the marriage, her husband, her mother-in-law and her sisters-in-law (husband's sisters) started ill-treating her and demanded Rs. 15,000/- on account of dowry and that her husband's elder brother's wife named Guddi who had illicit relations with her husband respondent Sukhdev, also started ill-treating her. She stated that her parents could not pay the demanded amount of Rs. 15,000/- and paid only Rs. 2000/-, but the respondents continued to insist for payment of the remaining amount. She also stated that on the fateful day, when she was cleaning utensils in the kitchen in the after-noon, her husband came there with kerosene in a plastic cane and poured the kerosene on her and then set her on fire. She further stated that she cried for help but none of the respondents, who were present in the house, came to the kitchen to extinguish the fire and that only an old man, who is a brother of her father-in-law, came along-with some other persons and extinguished the fire. She stated that her earlier statement (Exhibit PD) was not true and that she made such statement under pressure from her husband and mother-in-law who told that in case she made a statement implicating them, they would not provide any money on her treatment. The same day, she made another statement (Exhibit PH) to the Station House Officer, namely Shri N.D.

Sharma (PW4), the contents of which are similar to Exhibit PF. The only variation in Exhibit PF and the statement Exhibit PH made to PW4 N.D. Sharma is that in Exhibit PF, it is recorded that the statement Exhibit PD had been made under pressure from the mother-in-law and the husband of the deceased while in Exhibit PH, it is recorded that at the time of making of the statement Exhibit PD, her husband and mother-in-law were present and nobody from her parents side was there and because of that she could not make the true statement.

On 4-3-1990 the deceased died. Police registered a case of murder under Section 302 Indian Penal Code on the basis of the statement Exhibit PH made by the deceased on 1-3-1990. During the course of investigation, Police recorded the statements of Dayal Singh (PW7) and Pushpa Devi (PW6), the father and mother, respectively, of the deceased. Both of them corroborated the version given in Exhibit PF and PH that the deceased used to be pressurized by the respondents to bring a sum of Rs. 15,000/- from her parents. Post Mortem examination was conducted by Dr. R.K. Chaudhary (PW2). He opined that the cause of death was the burn injuries sustained by the deceased on 18-2-1990.

Trial Court charged the respondents with offences under Section 302 and 304-B read with Section 34, Indian Penal Code and on their pleading not guilty, tried them for the aforesaid offences. At the end of the trial, all the respondents were acquitted with the finding that the dying declarations Exhibit PF and PH allegedly made by the deceased did not inspire confidence. State has filed this appeal challenging the acquittal of the respondents.

We have gone through the evidence on record and heard the learned Additional Advocate General. We find no reason to dis-agree with the findings and the judgment of the trial Court.

It is clear from a reading of the application Exhibit PN dated 1-3-1990, which the deceased purportedly made to the Sub Divisional Magistrate for recording her fresh statement as also her statements Exhibits PF and PH that the story put-forward by the prosecution that the first statement Exhibit PD dated 20.2.1990 had not been made voluntarily by the deceased, is untrue and appears to be nothing but an excuse to wriggle out of the earlier statement Exhibit PD made by the deceased. In Exhibit PN, the application, it is stated that the deceased was not in her senses when she made the earlier statement (Exhibit PD). However, while making the statement Exhibit PF and PH, deceased gave different explanations for exonerating the respondents in her statement Exhibit PD. In Exhibit PF, she stated that she made the statement exonerating the respondents because she had been threatened by her husband and the mother-in-law that in case she made a statement implicating them, they would not give the money required for her treatment, but while making the statement Exhibit PH, she told that she did not name the respondents in the statement Exhibit PD, because nobody from her parents' side was present and her husband and mother-in-law were present and so she could not give the true version of the incident. These contradictions in Exhibit PN, PF and PH themselves are sufficient to hold that the dying declarations Exhibit PF and PH, do not inspire confidence.

Not only that there are contradictions in Exhibit PN, PF and PH which render the version given in Exhibit PF and PH doubtful, but the testimony of the parents of the deceased also show that the story regarding demand of Rs. 15,000/- appearing in statements Exhibit PF and PH is a cooked up one. The mother of the deceased Pushpa Devi (PW6) and father Dayal Singh (PW7) have denied that the deceased ever complained to them that the respondents harassed her or pressurized her for bringing dowry or an amount of Rs. 15,000/- on account of dowry. There should be no reason

to dis-believe their testimony, even though the prosecution declared them hostile and cross-examined them with the leave of the Court and they were confronted with their previous statements under Section 161 of the Code of Criminal Procedure. Dayal Singh (PW7) father of the deceased very categorically stated that the deceased changed the earliest version given in Exhibit PD when she came to know that she would be facing trial for an offence under Section 309 of the Indian Penal Code for having attempted suicide. As a matter of fact, it is made out from the evidence on record that a case under Section 309, Indian Penal Code, had been registered against the deceased at Police Station, Amb on 22-2-1990 on the basis of a report Exhibit PQ sent by S.I. Police Station, Dharamshala to S.H.O. Police Station, Dehra as the incident had taken place within the jurisdiction of Police Station, Amb.

In view of the above said position, we see no reason to interfere with the judgment of the trial Court. Consequently the appeal is dismissed.

(Surjit Singh)
Judge.

(Surinder Singh)
Judge.

December 05, 2007.
(bm)